

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	)	
In re:	)	
	)	Chapter 11
DELPHI CORPORATION, et al.,	)	Case No. 05-44481 (RDD)
	)	Jointly Administered
Debtors.	)	
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**DEMAND TO EXERCISE SETOFF AND RECOUPMENT RIGHTS BY  
YAZAKI NORTH AMERICA, INC.**

Pursuant to the Court's Final Order Under 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and Fed. R. Bankr. P. 2002, 4001, and 9014 (I) Authorizing Debtors to Obtain Postpetition Financing, (II) to Utilize Cash Collateral and (III) Granting Adequate Protection to Prepetition Secured Parties, entered by the Court on October 8, 2005, Docket No. 797 (the "DIP Financing Order"), Yazaki North America, Inc., together with its U.S. affiliates and subsidiaries ("Yazaki"), hereby makes its setoff and recoupment demand (the "Demand"):

1. Yazaki hereby demands to exercise its Setoff Rights<sup>1</sup> in the amount of \$399,728.03.
2. The Setoff Right demanded hereunder arises pursuant to 11 U.S.C. § 553, and the cases interpreting that section concerning setoff, as well as rights to recoupment in favor of Yazaki. The Setoff Right is based on the facts set forth in more detail below.

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<sup>1</sup> Any terms not defined in this Demand shall have the meaning set forth in the Court's DIP Financing Order. However, although the term "setoff" and "recoupment" are defined interchangeably in the DIP Financing Order, any use of the word "setoff" or "Setoff", rather than "recoupment" is not intended by Yazaki, nor shall it be considered an admission by Yazaki that it does not in fact have a right of recoupment under these circumstances, for which no prior approval is required.

3. On October 8, 2005 (the “Petition Date”), Delphi Corporation, together with its U.S. affiliates and subsidiaries (“Delphi”) owed the sum of \$775,158.00 to Yazaki (the “Debt Owed to Yazaki”) for goods and services provided to Delphi by Yazaki. A summary of the Debt Owed to Yazaki is attached hereto as Exhibit A. As set forth in the summary, however, because the parties agreed that Yazaki would not attempt to setoff certain metal surcharges, Yazaki, by this Demand, is only seeking to setoff \$399,728.03 of its prepetition claim against Delphi, as that claim includes \$375,429.97 for copper surcharges.

4. As of the Petition Date, Yazaki owed the sum of \$888,538.87 to Delphi (the “Debt Owed to Delphi”), for goods provided to Yazaki by Delphi. A summary of Debt Owed to Delphi is attached hereto as Exhibit B.

5. A copy of the contracts that give rise to both the Debt Owed to Yazaki and the Debt Owed to Delphi, and pursuant to which Yazaki makes its setoff and recoupment demands, is attached hereto as Exhibit C. In particular, on or about August 25, 2005, Delphi and Yazaki entered into a “Payment Agreement”, which provides that, among other things, “any of the Yazaki Entities may offset or recoup any amounts owed by any of the Delphi Entities to any of the Yazaki Entities against any amounts owed by any of the Yazaki Entities to any of the Delphi Entities.” See Payment Agreement, ¶4, a copy of which is attached hereto as part of Exhibit C.

6. Documentation to support the Setoff Right is attached hereto as follows:

- a. Exhibit "A" Summary of Debt Owed to Yazaki
- b. Exhibit "B" Summary of Debt Owed to Delphi
- c. Exhibit "C" Contracts between Yazaki and Delphi

Dated: March \_\_\_, 2006

**FOLEY & LARDNER LLP**

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Exhibit A

Summary of Debt Owed by Delphi to Yazaki

As of the Petition Date, Delphi owed Yazaki \$775,158.00 for goods and services provided to Delphi by Yazaki. This claim consists of the following elements:

1. Pursuant to Yazaki blanket purchase order numbers 259490, 261124 and 259487 (the "Yazaki Purchase Orders," copies of which are attached as part of Exhibit C), Yazaki supplied automotive component parts to Delphi. On account of goods shipped to Delphi under the Yazaki Purchase Orders, Delphi, as of the Petition Date, owed Yazaki \$743,235.33. This amount consists of \$367,805.36 for goods shipped to Delphi, and \$375,429.97 in copper surcharges which Yazaki is not seeking to setoff per the parties' Payment Agreement.

2. Pursuant to the Engineering Services Agreement by and between Yazaki and Delphi (the "Engineering Agreement," a copy of which is attached as part of Exhibit C), Delphi owes Yazaki \$31,922.67 for engineering services provided by Yazaki to Delphi prior to the Petition Date in the month of October, 2005.

In summary, because the Payment Agreement provides that Yazaki is not permitted to setoff metal surcharges, Yazaki is demanding to setoff \$399,728.03, which amount is exclusive of its \$375,429.97 claim for copper surcharges.

Exhibit B

Summary of Debt Owed by Yazaki to Delphi

Pursuant to Delphi purchase order numbers 259490, 261124 and 259487 (the “Delphi Purchase Orders,”),<sup>2</sup> Delphi supplied automotive component parts to Yazaki. On account of goods shipped to Yazaki under the Delphi Purchase Orders, Yazaki, as of the Petition Date, owed Delphi \$888,538.87.

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<sup>2</sup> A copy of a Delphi Purchase Order is attached as part of Exhibit C. Yazaki believes that all of the relevant contracts that give rise to Yazaki’s obligations to Delphi are in Delphi’s possession.

Exhibit C

Relevant Contracts Between Delphi and Yazaki